IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 12TH APRIL 2007 / 22ND CHAITHRA 1929

Crl.MC.No. 3759 of 2006()

S.T..269/2006 of JUDL. MAGISTRATE OF FIRST CLASS-IV, KOZHIKODE

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PETITIONER:

SUKUMAR AZHIKODE, AGED 81,
VIYYOOR, THRISSUR.

BY ADV. SRI.BECHU KURIAN THOMAS

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. K.V.JOSEPH, AGED 63 YEARS,
S/O.VARKEY, GEOFFREY COTTAGE,
ERANHIPALAM, KOZHIKODE.

BY PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR
ADV. SRI.C.C.ABRAHAM FOR R2

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 20/03/2007, THE COURT ON 12/04/2007 PASSED THE FOLLOWING:

"**CR"**

V. RAMKUMAR, J.

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Crl. M.C. No. 3759 of 2006

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Dated, this the 12th day of April 2007

ORDER

In this petition filed under Section 482 Cr.P.C., the petitioner (Sri. Sukumar Azhikode) seeks to quash Annexure 1 complaint and all proceedings against him in S.T. 269 of 2006 on the file of the Judicial First Class Magistrate Court -IV, Kozhikode. The said private complaint was filed by the 2nd respondent herein (K.V. Joseph) alleging the offence of defamation under Sec. 499 I.P.C. against the petitioner herein and punishable under Sec. 500 I.P.C.

2. The averments in the private complaint are as follows:-

The complainant is a senior criminal lawyer practicing mainly before the Calicut Courts. The first accused (Sri. Sukumar Azhikode) is a writer, orator, critic and cultural activist. The 2nd accused (Smt. K. Ajitha) is known as a person interested in women related issues and is the leader of some feminist movement. The complainant was the Special Public

Prosecutor in S.C. NO.124/02 pending before the Assistant Sessions Court-II, Kozhikode. The said case is known as the *"Ice Cream Parlour Sex Racket Case".* The complainant was considered and appointed as Special Public Prosecutor by the Government on the basis of his long term experience, integrity, honesty professional dedication etc. in the field. The complainant who is having 37 years of experience in the profession has never deviated from the professional ethics and principles in which he believes. The complainant has been the Government Pleader and Public Prosecutor for about 14 years both under the L.D.F. and U.D.F. Governments and was the District Government Pleader and Public Prosecutor of Wayanad District for one year immediately after it's formation. He was the Special Public Prosecutor in so many sensational cases including the sluice valve case, cases related to Marad riot incidents and Nadapuram riots. Most of the cases prosecuted by him ended in conviction. The complainant had also defended various sensational cases successfully. Many advocates who are now successful in the profession had practiced under the complainant and some of them are now serving as judicial officers. The complainant who is coming

from an agricultural family reached the pinnacle of his profession by his caliber, hard work and learning. The principles embodied in the procedural laws, The Evidence Act, the Indian Penal Code and the settled positions of law are the only criterion for the complainant while conducting cases, whoever may be the parties involved in such cases. When the aforementioned "Ice Cream Parlour Sex Racket Case" became sensational and the subject of wide discussion in the media and among the general public, the government decided to appoint an experienced and competent Special Public Prosecutor to conduct the prosecution effectively and impartially. That is how the complainant came to be appointed in that post considering his integrity, seniority, experience and reputation in the field. All the accused persons involved in that case were high profile personalities both in terms of money and political influence. Soon after the registration of the case as Crime No. 282/97 of Nadakkavu Police Station, Calicut, it became a sensitive issue. There were allegations that so many prominent persons including the former Minister Sri. P.K.Kunhalikutty were suspected as accused in that case. There were agitations from various

corners and various women organisations demanding the inclusion of Sri.P.K.Kunhalikutty in the array of accused. Ultimately, a final report was laid by the police against 16 accused persons after investigation and further investigation etc. as per orders of the Hon'ble High Court and the Apex Court. The agitations were continued even after the submission of the final report alleging that Sri. P.K. Kunhalikutty was purposefully deleted by the investigating agency. So many cases/petitions and public interest litigations were filed before various courts requesting for further investigation so as to include the above person in the array of accused. Most of the petitions were filed by the 2nd accused Smt. Ajitha who was the de facto complainant in the “Ice Cream Parlour Sex Racket case”. The duty of the judicial system and the prosecuting agency is to search for and find out the truth from the evidence collected and placed before them. The primary duty of the Prosecutor is to help the court to find out the truth by enlightening the court in all aspects. The complainant believes that the judicial system and its various organs including the prosecuting agency should not be influenced by emotions , opinions and sensitivity of persons

or organizations who have other vested interests in the subject. A special investigation team headed by a D.I.G had conducted the investigation as per the direction of the Supreme Court and the charge-sheet was filed before court against 16 accused persons who did not include Sri. P.K. Kunhalikutty. Even though the 2nd accused Smt. Ajitha had filed several petitions and complaints alleging that Sri. Kunhalikutty was also involved in the case, the investigations conducted and the final report filed did not include his name. All these points were elaborately discussed in the judgment of the Division Bench of the Honourable High comprising of Chief Justice Subashan Reddy and Justice Cyriac Joseph. But when the court-charge in the above case was read over to the accused by the Second Assistant Sessions Judge, Kozhikode, the name of P.K. Kunhalikutty was included in the Court charge though his name did not figure in the police charge. In a case where a charge-sheet is submitted after repeated investigation and a final conclusion has been reached by the investigating agency, the prosecutor has no other alternative except to depend on the charge-sheet so submitted. But when there is a deviation in the court charge from the charge-

sheet submitted before the court, it is needless to say that the prosecution case would be uprooted. Under these circumstances, the complainant, in his capacity as the Public Prosecutor, had filed a report pointing out the irregularity in framing the charge. If the charge is defective, the trial itself would be vitiated and the accused persons will get the advantage of the same. It was in this background that the complainant submitted a report to rectify the court charge so as to enforce the rule of law by way of fair trial . Unfortunately, certain persons and organizations, particularly, the one headed by the 2nd accused Smt. K. Ajitha took the above report filed by the complainant in the wrong spirit and interpreted the conduct of the complainant according to their own whims and fancies. They started a propaganda that the complainant had tried to help some persons to escape from the court proceedings. This had caused severe mental agony for the complainant who was totally innocent and who never intended to help any person. Considering the peculiarity of the scenario especially since the assembly elections were round the corner the complainant ignored those foolish and baseless statements made by political leaders who were

indulging in a political gimmick. Some of them took the matter to the Hon'ble High Court of Kerala and that resulted in the appointment of another Special Public Prosecutor and the transfer of the case to the Principal Assistant Sessions Court, Kozhikode. During the stage of evidence in the above Sessions Case, the important prosecution witnesses turned hostile to the prosecution. There were agitations on this issue also on the allegation that the witnesses turned hostile out of pressure from outside agencies. All these attempts were to crucify somebody with a view to cover up those failures. The witnesses who turned hostile are ladies who were never brought out of the curtain. But the so called activists utilised this opportunity to harass some other persons to take advantage of their vested interest. On 8-1-2006 a meeting was held at Hotel Nalanda Auditorium under the initiation of Smt. Ajitha. The first accused Sri. Sukumar Azhikode also participated in the meeting. In the Madhyamam Daily dated 9-1-2006, to the dismay and surprise of the complainant he came across a news item published on the 2nd page titled as

"ഐസ്ക്രീം കേസിൽ കുറ്റവാളികളും കൂട്ടുനിന്നവരും രക്ഷപ്പെടരുത്." വി.എസ്.""

In that news item the opinion and statements of several persons including political leaders and some social activists who had gathered there were given. The following report of the speech made by the first accused during the said meeting was shocking to the complainant:-

> "കോടതി എന്ത് വിധി നടപ്പാക്കിയാലും പ്രതിയെ ജനങ്ങൾക്ക് വിട്ടുകൊടുക്കണം. വേട്ടനായ്ക്കളെപോലെ സത്യത്തിന്റെ മണം കിട്ടിയാൽ പിറകെ പോയി മുഴുവൻ സത്യവും തെളിയിക്കേണ്ട സംവിധാനമാണ് കോടതി. എന്നാൽ ഇവിടെ നായ്ക്കൾ ഇടയ്ക്ക് വെച്ചു മണം പിടിച്ച് മറ്റെന്തിന്റെയോ പിറകെ പോകുന്നു. വഞ്ചനക്ക് കൂട്ടു നിന്ന പബ്ളിക്ക് പ്രോസിക്യൂട്ടറെ പിരിച്ചുവിട്ടാൽ പോരാ, കൈയും കാലും പിരിച്ചൊടിച്ച് ആശുപത്രിയിൽ എത്തിക്കുകയാണ് വേണ്ടത്. വളർത്തുനായ തിരിഞ്ഞു കടിച്ചാൽ ഏതെജമാനനും ഞെട്ടും. ഇവിടെ ഗവൺമെൻറ്ഞെട്ടിയിലല്ല. കാരണം ജനങ്ങളെ തിരിഞ്ഞു കടിക്കാനാണ് ഇത്തരം നായ്ക്കളെ ഗവൺമെന്റ് വളർത്തുന്നത്"

By using the words "പബ്ളിക്ക് പ്രോസിക്യൂട്ടറെ പിരിച്ചുവിട്ടാൽ പോരാ, കൈയും കാലും പിരിച്ചൊടിച്ച് ആശുപത്രിയിൽ എത്തിക്കുകയാണ് വേണ്ടത്" it is evident that the first accused was targeting the complainant by saying that he deserves such a treatment by the public. It is highly unbecoming for a person like the first accused to make such statements without

knowing the real facts and legal implications behind the issues. The first accused who is a cultural leader, writer, orator and a person who actively involves himself in the social life in Kerala could have contacted the complainant and personally verified the various aspects of the issue. His statements made otherwise were heartbreaking for the complainant, particularly, since the complainant himself was a student of the first accused at St. Joseph's College, Devagiri. The complainant has never flinched from the path of morality, integrity, honesty and sincerity. When people become older, they will attain more maturity and will approach the issues in a peaceful and calm manner. But the result was otherwise in the case of the first accused. By making the above statements, the first accused has instigated the members of the public and anti social elements to attack the complainant and thereby demoralise him. The words "കൈയും കാലും പിരിച്ചൊടിച്ച് ആശുപത്രിയിൽ എത്തിക്കുകയാണ് വേണ്ടത്." clearly shows the above intention. The accused are really trying to appease somebody for reasons known to them only. The 2nd accused who claims to be a social activist espousing the cause of

women had also propagated against the complainant by making defamatory statement to the effect that he had tried to uproot the “sex racket case” to help some persons. The public statements made by both the accused in media and interviews will go to show that the baseless allegations made by them were only for defaming the complainant. The imputations made by the accused are sufficient to picturise the complainant as a person of low dignity, integrity and status. The imputations have affected the complainant in so many ways including his profession. People of different walks of life have started viewing the complainant as a person having no character, honesty or integrity. The complainant is getting telephone calls from anti-social elements threatening that he will be manhandled by them in view of the instigating statements made with immaturity by the accused persons. The complainant's clients have started evading him. His competitors in the profession are utilising this opportunity as a weapon against him. His reputation has been lowered in the eye of the public. The complainant has been insulted. What he achieved by hard work for the last so many decades have been lost by the unexpected, immature and amputating

statements of the accused. The damage suffered by the complaint is so extensive that it cannot be calculated in terms of money. The first accused by making the above public statement which is highly defamatory has accomplished his intention to ruin the career of the complainant who has 37 years of standing at the Bar. The family members of the complainant are mentally upset by the irresponsible and malicious acts of the accused. When the complainant contacted the authorities of the Madhyaman daily regarding the publication of the statement they had replied that they believed the statement to be true. They further stated that the continued propaganda made by 2nd accused Smt. Ajitha made them believe those false allegations to be true. It is Smt. Ajitha who had arranged and instigated the first accused to make the defamatory statement given by the complainant and to publish the same as above. Since both the accused persons have acted in prosecution of the common intention and have conspired each other to defame the complainant taking the advantage out of a sensitive issue, the aforesaid acts amount to an offence punishable under Sec. 500 read with Sec. 34 I.P.C. The cause of action for this complaint arose on

several dates and lastly on 9-1-2006 when the complainant happened to read the defamatory statement made by the accused in various newspapers including Madhyamam Daily at his house at Eranhipalam within the limits of Nadakkavu Police Station. Hence, the complaint.

3. The learned Magistrate, after taking cognizance of the offence took the case on file as S.T. 269 of 2006. It is the said proceedings which are assailed in this petition under Sec. 482 Cr.P.C.

4. I heard Advocate Sri. Bechu Kurian Thomas, the learned counsel appearing for the petitioner/Ist accused (Sri. sukumar Azhikode) and Advocate Sri. V.K. Praveen, the learned counsel appearing for the 2nd respondent/complainant.

5. Advocate Sri. Bechu Kurian Thomas, the learned counsel appearing for the petitioner herein made the following submissions before me in support of this petition:-

Defamation can be of an individual or of a class. Prosecution for defamation can be initiated only by a person aggrieved by the offence in view of Section 199 Cr.P.C. In the case of defamation of an individual such individual alone will be entitled to lodge the complaint. In the case of a class

defamation any member of the class may be an aggrieved person. If a person were to make a statement that 20 per cent of the judges are corrupt or that all corrupt politicians should be hanged on the nearest lamppost, such statement cannot amount defamation. The petitioner never said that the Public Prosecutor in-charge of the Ice Cream Parlour Sex Racket case is an abetor to treachery. Even assuming that the petitioner authored the statement in question, the alleged imputations are really of a general character. Without such public vigil on such instrumentalities of the State it will be harmful for any society to sustain itself. A reading of Section 499 together with explanations 1 and 4 will indicate that the stress is on the reputation of the particular person. although Explanation 2 will show that there can be defamation against a company or an association or collection of persons. In **Raman Namboodiri v. Govindan - 1962 KLT 538** it has been held as follows:

> *"If the words complained of contain no reflection on a particular individual or individuals, but may equally apply to others belonging to the same class, an action for defamation will not lie. The defamatory matter to be actionable must be such that it contains an imputation concerning some particular*

> *person or persons whose identity can be established. It is unnecessary that the person whose conduct is called in question should be described by name. It is sufficient if on the evidence it can be shown that the imputation was directed towards a particular person or persons who can be identified".*
>
> *(emphasis supplied)*

Thus, if the imputation could not only fit in with the complainant but would equally fit in with some others also, there cannot be any charge of defamation. It cannot be gainsaid that Public Prosecutors should be persons of integrity and honesty. Why should the complainant consider himself to be a person lacking in integrity and honesty so as to nurture a feeling that the imputation was directed against him ? In ***Asha Parekh and others v. State of Bihar and others - 1977 Crl.L.J. 21*** pertaining to a cinematographic Hindi film by name "Nadaan", the portrayal of Advocates having no aptitude for the profession and who were oblivious of the nobility of the profession and who indulged in all kinds of underhand tricks for serving their personal ends, was held to contain no reflection upon a small and determinate body of advocates as a class so as to constitute the offence of defamation. It was further held that if

the imputation could equally apply to others although belonging to the same class an action for defamation could not lie. At page 2415 of the Law of Crimes by Hari Singh Gour, there is the following passage:

> *"The words complained of must contain an imputation concerning some particular person or persons whose identity can be established. If the words complained of contain no reflection upon a particular individual or individuals, but may equally apply to others although belonging to the same class, an action will not lie.*

In K.M. Mathew and Others v. Balan - 1984 K.L.T. 893 it has been held that the words "Collection of persons" contained in Explanation 2 to Section 499 I.P.C. should postulate an identifiable and determinate group of persons. There the imputation was that the office bearers of the Government College Teachers' Association had pocketed the salary withheld by the Government. The General Secretary of the Association contended that the said imputation had the character of attributing corruption to all the office bearers of the Association. The said contention was repelled by this Court. The petitioner herein who is now an octogenarian loved and respected by all does not deserve to undergo the

ordeal of trial.

6. I am afraid that I am unable to agree with the above submissions The legal propositions laid down in the decisions referred to by the petitioner's counsel are unassailable . But the question is whether those propositions have any application to the facts of the case.

7. In as much as the petitioner is not inclined to admit or deny the authorship of the statement contained in the Madhyamam Daily, the consideration of the question as to whether the imputations contained therein would amount to defamation is really academic. However, the petitioner having chosen to assail the proceedings before the court below on the footing that even if those statements were made by the petitioner, they do not constitute defamation, this court has necessarily to go into that question.

8. The 2nd respondent/ complainant was admittedly the Special Public Prosecutor in-charge of S.C. 124/'02 on the file of the Addl. Assistant Sessions court-II, Kozhikode in which 16 persons were facing trial in the case popularly known as “the Ice Cream Parlour Sex Racket Case” for offences punishable under Sections 366, 109 and 341 I.P.C.

and Sections 5 a(ia), c and d of the Immoral Traffic (Prevention) Act, 1956. This Court need not go into the controversy as to whether Sri. P.K. Kunhalikutty, the former minister was or was not liable to be proceeded against as an accused in that case or whether the court charge would be legal without reference to the name of Sri. Kunhalikutty. But the fact remains that he was not one of the persons charge-sheeted by the police and when the Addl. Assistant Sessions Judge proceeded to frame charge by mentioning the name of Sri.P.K.Kunhalikutty also, the complainant herein had intervened since according to the complainant if the name of a person whose complicity is not revealed by the prosecution records is made mention of in the court charge that would adversely affect the whole case. The above conduct of the complainant had created furore in various sections of the society. Several meetings were allegedly conducted to decry and denounce the conduct of the complainant as the Special Public Prosecutor. In W.P.C. 307176/05 and connected cases a learned single judge of this Court as per judgment dated 28-11-2005 directed removal of the complainant from the post of Special Public Prosecutor and also directed a

transfer of the case from the file of the Addl. Asst. Sessions Court-II, Kozhikode to the Principal Assistant Sessions court, Kozhikode. It was also clarified in the said judgment that the direction for removal of Special Public Prosecutor would not be a blot on the professional life of the complainant herein.

9. On 8-1-2006 a meeting was organised at Nalanda Auditorium at Kozhikode to evaluate the turn of events. Annexure A2 is the news item (with photographs) of the report of the meeting as published in the Madhymam Daily dated 9-1-2006. The caption below the photograph itself will show that it was a meeting to stage an agitation for demanding an enquiry against the wholesale disloyalty shown by the prosecution witnesses in the Ice Cream Parlour Case. The caption below the photograph reads as follows:-

> "ഐസ്ക്രീം പാർലർ കേസ് കൂട്ടമൊഴിമാറ്റത്തിൽ അന്വേഷണംആവശ്യപ്പെട്ടു നടന്ന സമര പ്രഖ്യാപന കൺവെൻഷൻ - വി. എസ്.അച്യുതാനന്ദൻ ഉദ്ഘാടനം ചെയ്യുന്നു"

The title of the news item is to the effect that none of the culprits and their abettors in the "Ice Cream Parlour Case" should go scotfree. The news item proceeds to state that

the petitioner herein (Sri. Sukumar Ahikode) had opined that in the light of the disclosure by Rejina, the victim , the culprits have to be awarded the punishment prescribed by the holy Quran. It is, thereafter, that the statement in question attributed to the petitioner herein is to be found. An English translation of the said statement is as follows:

> *"Whatever be the verdict passed by the court, the accused person should be handed over to the people . The judicial system is such that the court should be like hunting dogs going after the scent of truth and bring to light the whole truth. But here the dogs, after taking the scent, go after something else in between. The Public Prosecutor who aided the treachery should not only be terminated from service but his hands and legs should be twisted and broken and taken to the hospital. When the pet dog bits back, any master will get shocked. Here the Government was not shocked because such dogs are maintained by the Government for biting back the people"*

If the petitioner did make the above statement, then, the sentence which read "the Public Prosecutor who aided the

treachery should not only be terminated from the service but his hands and legs should be twisted and broken and taken to the hospital" can obviously refer to the complainant only since the complainant was the only Special Public Prosecutor who was in-charge of the case and whose services were terminated. Any prudent or reasonable reader of the news item can easily understand that the reference in the statement was not to any class or indeterminate body of persons but to the complainant and to the complainant only. Hence, the complainant is the aggrieved person within the meaning of Section 199 Cr.P.C. A bare reading of paragraphs 5, 15, 19, 21, 22 and 26 of the complaint will show that the entire focus therein is on the petitioner/first accused.

10. In ***V. Subair v. Dr. P.K. Sudhakaran - 1987 Crl.L.J. 736 = 1987 (1) KLT 291.*** It has been held that if the description and attendant circumstances suggest with fair certainty the identity of the person intended, that is sufficient to attract the offence and that Explanation 3 to Section 499 I.P.C. states that an imputation in the form of an alternative or expressed ironically may also amount to defamation and that defamation by innuendo is also well

known. Again in ***M.N. Meera v. A.C. Mathew and another - 2002 Crl.L.J. 3845,*** the offending words read as follows:

> "A retired supply officer of Taliparamba is the person behind this irregularity"

Referring to the said statement, the learned Judge observed as follows:

> "*According to the petitioner he is the only retired Taluk Supply Officer of Taliparamba and the reference was obviously against him and his reputation is thereby harmed.....*"
> *"If the description and attendant circumstance suggest, with fair certainty, the identity of the person intended, that is sufficient to attract the offence. Explanation 3 to Section 499 states that an imputation in the form of an alternative or expressed ironically, may also amount to defamation. Defamation by innuendo also not unknown to law. It was, therefore, held that the reference need not be explicit and if the description is such that a reasonable person, in the context in which it is made, would be able to understand it as a reference to a particular person, that would suffice".*
>
> *(emphasis supplied)*

11. Oratory i.e. the art of speaking is a rare gift which only the glib tongued are endowed with. There are personalities of eminence who by the right choice of words, fluency, eloquence, diction, felicity of expression, style of

delivery, gesticulations and gestures, contextual satires and apt anecdotes can hold a mammoth crowd speechless and spell-bound. Very often, the charisma of the speaker adds to the bewitching quality of the speech. The flourishes, pompousness and rhetoric add flavour to the speech. There are among us persons who are so artless, wearisome, monotonous, disgusting, inarticulate and boring that the verbal constipation or diarrhea, as the case may be, which they suffer from on account of inexperience or imperfection or incompetence or prolixity or loquaciousness, is tormentingly unbearable. in contradistinction, there are among us, gifted souls who can, by spoken words, touch those sensitive areas within us as to produce grief, sorrow, compassion, courage, strength sense of safety, empathy, attraction, love, fear, anger, hatred, jealousy, distrust etc. The power of speech is so potent that it can, if properly harnessed, be used for benevolent purposes and, if abused, be used for evil ends. Our nation has seen great speakers who by their fiery speeches could instill patriotism and spirit of revolution in the masses. Persons have become both famous as well as infamous through their volatile and

captivating speeches.

12. The right to freedom of speech and expression is indeed a very valuable right which under Article 19 (1)(a) of the Constitution of India has transcended to every citizen in the form of a fundamental right. Whether it is an oration or talk or discourse or lecture or elocution, it is all a manifestation of the exercise of the said right. But persons, howsoever high or low, who exercise this invaluable right should realise that it is not an absolute or limitless right. The framers of our Constitution have thought it fit to confer upon all citizens the said right, inter alia, subject to the law of contempt of Court, defamation or incitement to an offence. The law guards and protects the reputation of an individual as an inviolable right the infringement of which gives rise to an actionable claim.

13. There is a growing tendency to attribute motives to and denigrate persons who are holders of public office. Even where an impropriety or mistake on the part of a State functionary or departmental official is established there is a pernicious tendency to generalise persons belonging to the particular class of functionaries or officials. Instances are not

rare when the conduct of persons is made the subject matter of open criticism and denunciation without any genuine attempt made to find out the complete facts. Authoritative and seemingly expert comments are very often passed without any investigation into the factual matrix. This is particularly, so in the matter of court proceedings. Without even witnessing what transpires before the court of justice and without ascertaining on what material or evidence a court of law arrives at a judicial conclusion, opinions are freely and liberally expressed by persons styling themselves as critics or jurists. Persons who indulge in such thoughtless and reckless exercise commit calumny either in the form of slander or in the form of libel. They do so without caring to ascertain the real facts and verify the actual truth and thereby run the risk of an action for defamation. It is no defence to contend that the statement was made as a scourge to cleanse the system or in the interest of the general public, if through that statement, the reputation of persons who are the participants of our public service system is maligned. The rank of position of the offender is hardly relevant. It is not necessary to prove that actual harm has

been caused. It is sufficient to show that harm was intended to the complainant's reputation or that the accused person knew or had reason to believe that the imputations made by him would harm the complainant's reputation.

In the light of the foregoing discussion, I do not find any good reason to quash the proceedings before the Court below. Going by the averments in the complaint and the imputations in the statement allegedly made by the petitioner herein, there was sufficient ground for proceeding with the complaint justifying the cognizance taken and process issued by the Magistrate. This petition is accordingly dismissed permitting the continuance of the proceedings before the court below. In case, the petitioner finds it difficult to attend the Magistrate's court due to any reasonable excuse, he can definitely invoke Section 317 Cr.P.C. which clothes the Magistrate with sufficient power to dispense with the personal attendance of the petitioner.

V. RAMKUMAR,
(JUDGE)

ani.